CF0000062925

(02)

समक्ष माननीय उच्च न्यायालय म.प्र. जबलपुर

फौजदारी अपील क्रं. 905 /2000 Division Bench (Criminal)

बितुल राम आत्मज इंजोर साय, आयु 35 वर्ष,
पेशा - खेती ग्राम बैंगापारा गिरहुल डीह थाना
सीतापुरा, जिला सरगुजा (म.प्र.) -- -- अभियुक्त/अपीलार्थी
(जेल अभिरक्षा में)

3430
1/11/00
Filed on behalf of
by Shri L.G. Melani
Advocate

वि रू द्ध

म.प्र.शासन
द्वारा थाना प्रभारी, थाना सीतापुर जिला
सरगुजा (म.प्र.) -- -- उत्तरदाता

सजा :- धारा 302 भा.द.सं. में आजीवन कारावास की सजा तथा धारा 201 भा.द.सं. में 7 वर्ष की कठोर सजा दोनो सजाये एक साथ चलेंगे

फौजदारी अपील अंतर्गत धारा 374 भा.द.प्र.सं. के अंतर्गत

(30)

(14)

HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH

Criminal Appeal No.905 of 2000

Bitul Ram

- Versus -

State of Madhya Pradesh (now Chhattisgarh)

JUDGMENT FOR CONSIDERATION

Sd/-
JUDGE
30.8.2005

HON'BLE MR. JUSTICE D.R. DESHMUKH

1. agree.

Sd/-
Dilip Raosaheb Deshmukh
Judge

POST FOR JUDGMENT ON 2ND SEPTEMBER, 2005

Sd/-
L.C. Bhadoo
Judge

(31)

HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH

Criminal Appeal No.905 of 2000

Bitul Ram

- Versus -

State of Madhya Pradesh (now Chhattisgarh)

Present: -

Mr. Abhay Tiwari, Advocate: For the appellant.

Mr. J.D. Bajpayee, Govt. Advocate/Public Prosecutor: For the State/respondent.

DIVISION BENCH: -

HON'BLE MR. L.C. BHADOO AND

HON'BLE MR. D.R. DESHMUKH, JJ.

JUDGMENT

(Delivered on 2ND September, 2005)

The following judgment of the Court was delivered by *L.C. Bhadoo, J*: -

1. By this appeal, the accused/appellant has assailed the judgment of conviction and sentence dated 23rd February, 2000, passed by the 1st Additional Sessions Judge, Ambikapur, in Sessions Trial No.306/99, whereby learned Additional Sessions Judge after holding the accused/appellant guilty for the commission of offence under Sections 302 & 201 of the I.P.C. for committing the murder of his wife Pyari Bai and thereafter burying her body in order to screen himself from legal punishment, sentenced him to undergo imprisonment for life under Section 302 of the I.P.C. and R.I. for seven years under Section 201 of the I.P.C. However, learned Additional Sessions Judge directed that both the sentences shall run concurrently.

2. Brief facts necessary for the disposal of this criminal appeal are that on 2-7-99 Nanki Bai along with others filed a written complaint Ex.P-6 before the Station House Officer, Police Station: Sitapur with allegations that her daughter Pyari Bai was married to accused/appellant Bitul Ram about 15 years back, she was not suffering from any disease or ailment and 10 days before, she died all of a sudden, thereafter, her body was buried. After

three days, while performing the last rites of bathing they have come to know that the accused after consuming liquor attacked her wife (daughter of Nanki Bai) and murdered her. On receiving this report, the merg intimation Ex.P-14 was recorded and the Station House Officer approached the Sub Divisional Magistrate for granting permission to dig out the body of Pyari Bai in order to ascertain the veracity of the complaint made by Nanki Bai and others. Accordingly, permission was granted, and the Naib Tehsildar-cum-Magistrate was authorized to supervise the proceedings of digging out the dead body of the deceased. Accordingly, the notice Ex.P-1 was issued to the witnesses and after digging out the dead body, Panchnama of the dead body Ex.P-2 was prepared in the presence of Naib Tehsildar. The site plan Exs.P-3, P-4 & P-9 were got prepared. The post mortem of the body of was conducted on the spot by Dr. K.K. Datta & Dr. Malviya on 13-7-1999. While conducting the post mortem, the doctors found that 7th left side rib was fractured and the left lung was punctured on account of piercing of fractured rib, however, no external injury was found on the body. The doctors prepared the post mortem report Ex.P-12 and opined that the cause of death was shock, as a result of injury to the lung, the nature of death was homicidal and the same was caused 3-4 weeks prior to the date of post mortem. On receiving this report, the Investigating Officer registered the case against the accused/appellant under Ex.P-15. Thereafter, the accused/appellant was arrested and after completion of investigation, the Station House Officer filed charge sheet against the accused/appellant in the Court of Judicial Magistrate, First Class, Ambikapur, who committed the case to the Sessions Judge for trial, from where learned 1st Additional Sessions Judge received the case on transfer for trial, who after hearing counsel for the parties and perusing the papers framed charge against the accused/appellant for the commission of offence under Section 302 & 201 of the I.P.C. The accused/appellant abjured the guilt.

3. The prosecution in order to prove the above offence against the accused/appellant examined in all 15 witnesses. Thereafter, learned 1st Additional Sessions Judge recorded the statement of the accused/appellant under Section 313 of the Cr.P.C. in which the accused/appellant denied the evidence of the prosecution witnesses and stated that he is innocent and the witnesses being relatives of the deceased have deposed against him in order to implicate him in a false case. The accused/appellant has further stated that he was residing with his wife Pyari Bai in a peaceful manner and

with harmony, he had not assaulted his wife, and the villagers informed him that his wife after consuming liquor fell down. He produced two witnesses in his defence namely, DW-1 Girpal Ram & DW-2 Ram Lal. They have deposed that on the fateful day, Pyari Bai was in drunken condition, and while she was going to graze her goats, they found her in drunken condition and advised her not to go outside. Learned Additional Sessions Judge after hearing Additional Public Prosecutor and counsel for the accused convicted and sentenced the accused in the aforesaid manner.

4. We have heard Mr. Abhay Tiwari, learned counsel for the accused/ appellant and Mr. J.D. Bajpayee, learned Govt. Advocate/Public Prosecutor for the respondent/State.

5. Learned counsel for the accused/appellant argued that there was no direct evidence connecting the accused/appellant with the murder of his wife. He argued that Pyari Bai died on 18-6-1999, whereas the report was lodged on 2-7-1999, in spite of the fact that when the body of Pyari Bai was buried on 19-6-1999, the complainant (mother of the deceased) and other prosecution witnesses i.e. brother of the deceased were present and no objection was raised at that time. However, after 15 days, the matter was reported to the Police and the accused/appellant has been falsely implicated. Without proper appreciation and evaluation of the prosecution evidence, the accused/appellant has been convicted merely on surmises and conjectures.

6. On the other hand, learned Public Prosecutor supported the judgment of trial Court.

7. Having heard learned counsel for the parties, we have carefully scanned through the prosecution evidence, judgment of the trial Court and other material available on record. In order to connect the accused/appellant with the commission of murder of his wife Pyari Bai, the prosecution has tried to establish the offence on the basis of evidence of eyewitnesses namely PW-3 Mankuni @ Smt. Pushpa & PW-12 Habu; the circumstantial evidence i.e. the extra judicial confession made by the accused before PW-5 Mahto Ram (brother of the deceased), PW-7 Dalu Ram, PW-8 Khoda Ram & PW-10 Gwal; and on the basis of the post mortem report in which it has been mentioned that the deceased died on account of puncture of left lung by the 7th broken rib of the deceased.

8. As far as the evidence of PW-3 Mankuni & PW-12 Habu is concerned, PW-3 Mankuni has turned hostile and she has not supported the prosecution case. However, PW-12 Habu claiming himself to be eyewitness has stated that his residence is near to the house of the accused, 4-5 months back at about 3 p.m. to 4 p.m. in the day he saw that the accused was attacking his wife with fists and kicks, he intervened in the matter and thereafter went to his house. At about 8 p.m. in the evening, one Sawan came to his house and informed that Pyari Bai died. Thereafter, he left for the house of the accused and saw that Pyari Bai was lying dead. In cross-examination, this witness has admitted that the mother of deceased Nanki Bai is the daughter of his father's brother. He has further stated his father and father of the deceased were real brothers. He has also stated that on the fateful day he was at his residence and when he went near the dead body of Pyari Bai, Mahto, brother of the deceased, was also there and he started weeping, thereafter, Mahto said that he is going back to his village Bharatpur to inform his mother and brothers. In para 7 of cross-examination, this witness has stated that he had not informed Mahto about the assault made by the accused on the deceased, even he has not informed about the said fact on the day when the body was buried and he disclosed this fact to the Police only after 2-3 months. The above fact which has been brought on record in cross-examination makes the evidence of this witness doubtful and his evidence does not inspire confidence of the Court for the reason that being such a close relative of the deceased when he saw the accused attacking the deceased and on the same day night Pyari Bai died, further when cousin of this witness and real brother of the deceased came on the spot, why this witness had not informed him about the assault made by the accused on the deceased? Being such a close relative in the natural way it was expected from this witness that he should have informed Mahto about the assault made by the accused. Even when the case was registered after about 15 days and the Police came in the village for investigation purposes, even then he had not informed the family of the deceased, which further creates doubt about the genuineness of the evidence of this witness. In this background, we have also to take into account the relation of this witness with the deceased. As such, no reliance can be placed on the evidence of this witness, as he appears to be a created witness. In the result, the prosecution has failed to connect the accused/appellant with the commission of the murder of Pyari Bai by the accused/appellant on the basis of the testimony of eyewitnesses.

9. In order to hold the accused/appellant guilty on the basis of circumstantial evidence, the prosecution has to prove the offence as per the settled principles laid down by the Hon'ble Apex Court in the matter of **Nesar Ahmed vs. State of Bihar** reported in **AIR 2001 Supreme Court 2416** i.e. in a case based on circumstantial evidence, before the Court can record conviction, it must satisfy itself that circumstances from which an inference of guilt could be drawn have been established by unimpeachable evidence led by the prosecution and that all the circumstances put together are not only of a conclusive nature but also complete the chain so fully as to unerringly point to the guilt of accused and are not capable of any explanation which is not consistent with the hypothesis of the guilt of the accused.

10. On the basis of this principle, if we examine the prosecution evidence, the theory put forward by the prosecution regarding extra judicial confessional made by the appellant about the commission of crime by him is concerned, the prosecution has utterly failed to establish the connection of the accused with the crime for the reason that PW-5, Mahto who is the brother of the deceased and signatory of the first information report Ex.P-6 based on which the investigation started, in his examination-in-chief has stated that after three days of the death of Pyari Bai when they went to take bath, accused Bitul Ram informed him that on account of quarrel between him and Pyari Bai, he slapped her 3-4 times and he also fisted her 3-4 times, on account of which Pyari Bai died. In the morning, he came back to his house at Bharatpur and informed his mother and brothers. He has further stated that even Mankuni informed him about the assault made by the accused on the deceased and thereafter, they lodged the report Ex.P-6 in the Police Station. In cross-examination para 5, this witness has stated that if this fact has not been mentioned in the report Ex.P-6 about the extra judicial confession made by the accused, he is not able to give any reason. However, at the time of writing the report this fact was told to Baratu, who wrote the report Ex.P-6. In para 6 of his evidence this witness has further stated that he does not know why the fact of extra judicial confession has not been recorded by the Police in his statement before the police Ex.D-1, and he cannot give any reason for the same, in fact he disclosed this fact to the Police. The above cross-examination makes the evidence of this witness unreliable and untrustworthy. Perusal of the report Ex.P-6 which was lodged by PW-5 and his mother before the Police shows that in this

report it has not been mentioned that the accused made extra judicial confession before this witness (PW-5) and other persons that he assaulted the deceased on the fateful day. In this report, it has been written that when they went to perform the ceremony of bathing on 3rd day, he came to know that his sister was not sick, but she was attacked by the accused. It has not been mentioned in this report that the accused made extra judicial confession before PW-5 admitting the fact of assault made by him.

11. It is not a case where there may be total omission about the fact of assaulting the deceased by the accused. Here in this report it has been mentioned that PW-5 Mahto came to know about the fact that the deceased was assaulted by the accused and therefore, there is a definite assertion by this witness in Ex.P-6. Even Nanki Bai, mother of the deceased has also signed this report and Khoda Ram (PW-8) has also signed this. Therefore, the only inference can be drawn that had the accused made extra judicial confession before Mahto about the assault made by him on the deceased, then there was no reason not to mention that fact in this report and in this report this fact has not been mentioned as to from whom he came to know about the assault made by the accused on the deceased. Further, in his evidence this witness has stated that even Mankuni (PW-3) informed him about the fact that she witnessed the assault made by the accused on Pyari Bai, but, even that fact has also not been mentioned in this report Ex.P-6.

12. In this connection, if we assess the veracity of the evidence of this witness PW-5 Mahto in the background that he is the real brother of the deceased and he himself went to the house of the accused on the same day and thereafter, at the time of funeral also he was present, thereafter remained silent for about 15 days and lodged the report on 2-7-1999, whereas, the death of the deceased took place on 18-6-1999, no reason has been assigned for delay. Moreover, when on the third day of the death of the deceased, the accused made extra judicial confession i.e. around about on 21st/22nd June, 1999, before him (PW-5) as per his version, then why they remained silent up to 2nd July, 1999, no explanation has been offered. Therefore, on account of the improvement made by this witness in his evidence before the Court as well as delay in lodging the report and also the fact of close relation of this witness with the deceased, makes the evidence of this witness unreliable and untrustworthy.

13. Similar is the evidence of PW-6 Nanki Bai, mother of the deceased, and PW-7 Dalu Ram, PW-8 Khoda Ram, & PW-10 Gwal, brothers of the deceased. For the reasons mentioned in disbelieving the evidence of PW-5 Mahto, same principle applies in respect of the evidence of these witnesses, as they have stated that the accused made extra judicial confession regarding the assault made by him on the deceased, whereas in the report Exs.P-6 & P-8 there is no mention of such extra judicial confession made by the accused before them. Therefore, on the same ground, the evidence of these witnesses regarding extra judicial confession does not inspire confidence and no reliance can be placed on the evidence of these witnesses in order to connect the accused with the murder of Pyari Bai, particularly when these witnesses are closely related to the deceased.

14. Now, coming to the medical evidence that in the post mortem report 7th rib was found fractured and on account of that, the left lung of the deceased was punctured and that was the cause of death of the deceased, merely on the basis of this isolated piece of evidence without corroboration by any circumstantial evidence connecting the accused with the murder of Pyari Bai, the accused cannot be held responsible for the crime based on the principle laid down by the Apex Court regarding circumstantial evidence. It has come on record that even the deceased was in the habit of consuming liquor and the Doctor has stated that such injury can be received by fall.

15. It was the duty of the prosecution to establish the crime against the accused beyond reasonable doubt. In a criminal trial, the accused cannot be convicted for the crime, particularly, in a heinous crime, merely on the basis of inference, surmises or conjectures. There is no legal evidence on record, which shows that relations of the accused and the deceased were strained, or some other material, or the previous or after conduct of the accused on the basis of which the accused can be connected with the murder of his wife.

16. Therefore, there is no evidence on record to connect the accused with the murder of Pyari Bai, as such, the finding of the trial Court holding the accused guilty for the commission of murder of his wife cannot be sustained, as the finding is not based on any reliable and clinching legal evidence. Under these circumstances, we have no alternative, but to set aside the conviction recorded by the trial Court.

17. In the result, the appeal succeeds and the same is allowed. Conviction and sentences imposed on the accused/appellant are set aside. The accused be set at liberty forthwith, if not required in any other case.

Sd/-
L.C. Bhadoo
Judge

Sd/-
Dilip Raosaheb Deshmukh
Judge

Soma